IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 32

JAMES R. HOFFA, *Petitioner*

v.

UNITED STATES

No. 33

THOMAS EWING PARKS, *Petitioner*

v.

UNITED STATES

No. 34

LARRY CAMPBELL, *Petitioner*

v.

UNITED STATES

No. 35

EWING KING, *Petitioner*

v.

UNITED STATES

SUPPLEMENTAL REPLY OF PETITIONERS TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO PETITIONERS' "MOTION FOR RELIEF"

In our "Reply" we pointed out (p. 5, fn. 3) that, in hearings held while the jury deliberated, the Government admitted an extensive surveillance of associates of petitioners, including one Charles O'Brien. The

admitted surveillance of O'Brien occurred at the times he was in Chattanooga during the period of time from January 17, 1964 until January 23, 1964 (VII Def. A. 3254a, 3272a, 3381a).

Mr. O'Brien had been indicted on May 8, 1963, in Detroit, charged with removing merchandise from a bonded warehouse, which cause is now pending in this Court on Petition for Writ of Certiorari, No. 823, October Term, 1966. Mr. O'Brien was then represented in his case by Mr. James E. Haggerty, Sr. and Mr. William E. Bufalino, the same attorneys who were representing petitioner Hoffa in the instant cause.

Mr. O'Brien went to Chattanooga on January 17, 1964 and returned to Detroit on January 18, 1964, because of the fear of Mr. Haggerty, who was also representing petitioner Hoffa in the instant trial, that his bond did not permit him to leave the State of Michigan. On January 22, 1964, Mr. Haggerty obtained, by telephone from Chattanooga, an order from the Federal District Judge in Detroit which permitted Mr. O'Brien to go "beyond the jurisdiction and territorial limits of the Court."

On January 23, 1964, he went back to Chattanooga. He was met at the airport by FBI agents when he arrived in Chattanooga at 11:04 a.m., January 23, 1964 (VII Def. A. 3380a, 3381a, affidavit of FBI agent William L. Sheets, filed 2/15/64). The FBI must have had prior knowledge of the time that he expected to arrive in Chattanooga.[1]

Mr. O'Brien, who was raised by petitioner Hoffa, lived in petitioner Hoffa's home in Detroit, and while in Chattanooga, he stayed in Hoffa's hotel suite (VI Def. A. 2751a, VII Def. A. 3351a).

---

[1] At least the lead to this information must have come from the illegally monitored telephone conversation referred to hereafter.

In the Government's brief in response to Mr. O'Brien's Petition for a Writ of Certiorari, No. 823, October Term, 1966, filed in this Court on February 13, 1966, the Government admits that it, by illegal electronic surveillance, overheard two conversations of Mr. O'Brien, which conversations were summarized in the log of the monitoring FBI agents.[2] As to one of the conversations, the Government states:

> "It * * * appears from the logs of this surveillance * * * that petitioner O'Brien was on the [monitored] premises and was overheard in January, 1964, when he placed a telephone call and requested one of his attorneys to file an application relating to the territorial conditions of his release on bail."[3]

This conversation was with one of petitioner Hoffa's attorneys in the instant cause. The FBI log showed that it concerned whether Mr. O'Brien could travel to Chattanooga for the instant trial. It appears most likely that it was from this conversation that the Government learned that Mr. O'Brien was planning to travel to Chattanooga, and consequently learned of the time of his arrival at the airport in Chattanooga.[4]

---

[2] This electronic "bug" was placed in a commercial establishment of an acquaintance of Mr. O'Brien, and was monitored from January 21, 1963 until July 27, 1964, a period of 18 months. The Department of Justice has refused, upon request, to tell either us or Mr. O'Brien's attorney the particular commercial establishment which was "bugged."

[3] The Government significantly omits the exact date of this conversation, although supplying the exact date of the other conversation and the exact dates of the monitoring. Our best information is that it occurred on or about January 21, 1964.

[4] Although the Government states that its inquiry indicates that the monitored conversation was not communicated to the attorneys who tried Mr. O'Brien's case, nor to anyone outside the FBI (p. 11), it does not state that information learned therefrom was not used for internal intelligence of the FBI itself.

The Government states that its inquiry indicates that O'Brien was not "the *direct* subject of electronic surveillance" (emphasis added); that no "electronic surveillance" was conducted on his residence or business premises (p. 11); and that the above mentioned electronic monitoring of Mr. O'Brien's January, 1964 conversation did not result from a surveillance in which he was "personally the subject of direct surveillance." (p. 12). This, like the Government's response to the "Motion for Relief" filed herein, leaves many questions unanswered. There is no doubt that Mr. O'Brien was the subject of surveillance by the FBI in Detroit for a long period of time (including the very time of the monitoring), and that he was the subject of FBI surveillance in Chattanooga during the same period of time. If the Government does not regard Mr. O'Brien as the *direct* subject of his surveillance in Chattanooga in conjunction with petitioners' trial, then the Government's response does not exclude electronic surveillance of Mr. O'Brien's telephone and room at the hotel in Chattanooga.

We call the Government's response in Mr. O'Brien's case to the attention of the Court in this cause for several reasons. First, the Government there admits overhearing by an illegal electronic "bug," a conversation with his attorney. That attorney was also the attorney for petitioner Hoffa, and the conversation concerned the instant trial. Obviously, the information so obtained was immediately communicated to the FBI in Chattanooga for use in the instant case. Secondly, it is evidence of yet another electronic monitoring of conversations of close associates of petitioner Hoffa. As is shown in affidavits attached to our "Motion," the Detroit telephone of an attorney for both petitioner

Hoffa and Mr. O'Brien (Mr. Bufalino) was tapped by the Detroit police at this same period of time. And lastly, it adds support to our statement in our Reply Memorandum (p. 2) that "It is most difficult to believe, * * * that the Government's jury tampering prosecution of petitioner Hoffa, a chief Government target, was clean, although at the very time of that prosecution the Government, by its own admissions, extensively wiretapped and eavesdropped in criminal cases of comparatively minor importance to it."

CONCLUSION

We respectfully submit that this additional acknowledgment by the Solicitor General of illegal electronic surveillance of a close associate of petitioner Hoffa adds support to the affidavits heretofore filed in support of our "Motion for Relief Because of Government Wiretapping, Electronic Eavesdropping and Other Intrusions."

Respectfully submitted,

MORRIS A. SHENKER
DANIEL B. MAHER
JOSEPH A. FANELLI
Counsel for Petitioner Hoffa

JACQUES M. SCHIFFER
Counsel for Petitioner Parks

CECIL D. BRANSTETTER
Counsel for Petitioner Campbell

P. D. MAKTOS
HAROLD E. BROWN
Counsel for Petitioner King

February, 1967